IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFEREBCE NO. 1 OF 1989

Council of the Institute of
Chartered Accountants of India,
Indraprastha Marg, New Delhi .. Petitioner

v/s.

Shri M.D.Loya, Chartered Accountant,
M.D.Loya & Co. Chartered Accountant,
507, Bharat Chambers, 5th floor,
Baroda Street, Bombay-9. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S. Srikrishna i/by M/s. Kanga & Co. for petitioner.

Respondent present in person.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard learned senior counsel for the Institute of Chartered Accountants of India and Shri M.D.Loya-the respondent in person.

2. Interalia, the charge of professional misconduct was that the respondent as an auditor failed to take the normal and reasonable care for carrying out the audit and accounts of the trust viz. Tekchand Kanhaiyalal Nakipuria Charity Trust, Bombay for the year 1984-85 and particularly, failed to carry out the verification of fixed deposit receipts (FDRs).

2. During the course of enquiry before the disciplinary committee, the respondent agreed that

under the ordinary practice, as an auditor he should have called for all the FDRs for physical verification before signing the audit report in form 10B under section 12A(b) of the Income Tax Act, 1961. He stated before the disciplinary committee that he relied upon the version given by the trustee in his letter dated 2.7.1985 and did not insist for production of the FDRs because all the FDRs except one of Rs.6700/- was seen by him during last year's audit. He, however, pleaded before the disciplinary committee that he did not have any intention of deliberately signing the report which was not true. He submitted that he had always followed the statements and guidance notes issued by the Institute from time to time while carrying out his work as an auditor and this was for the first time that there was a lapse on his part. He, therefore, requested for lenient view.

3. The disciplinary committee held that there was lapse on the part of the respondent in carrying out the audit obligations and the audit report submitted by him concerning the said trust was not correct. The disciplinary committee, accordingly, held that the case of professional misconduct within the meaning of section 21 of the Chartered Accountants Act, 1949 read with clauses 7 and 8 of part I of second schedule of the said Act was made out. The Council accepted the said report and has recommended that the respondent be reprimanded.

4. In what we have stated above, it is clear that the respondent did not seriously challenged the lapse on his part in not calling for all the FDRs for physical verification of the concerned trust before signing the audit report. In this view of the matter, the finding recorded by the disciplinary committee and accepted by the Council that respondent was guilty of professional misconduct does not require any deep scrutiny and and we concur with the said finding.

5. The respondent had been very candid before the disciplinary committee in admitting his lapse. The respondent has a long-standing as chartered accountant in practice and it was for the first time that the respondent appears to have omitted to carry out his obligations as an auditor properly. The lapse on the part of the respondent was for the first time and we are informed that no such lapse either before the lapse in question or thereafter has occurred.

6. We are, thus, satisfied that the order of reprimand shall meet the ends of justice. We dispose of this reference accordingly.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)